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U.S. Citizenship and Immigration Services

H2

[redacted]

JAN 31 2005

FILE: [redacted] Office: BALTIMORE, MARYLAND Date:

IN RE: [redacted]

APPLICATION: [redacted]

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application declared moot.

The applicant is a native and citizen of Iran who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The acting district director also referred to the applicant's U.S. citizen wife as the applicant's "alleged" spouse, and noted that the documentation on the record did not demonstrate that the applicant was legally free to enter into marriage with his U.S. citizen wife.

On appeal, counsel contends that the applicant is not subject to the fraud-based grounds of excludability, because he did not willfully misrepresent any facts; he relied on the actions of his attorney, who has since been disciplined by the Board of Professional Responsibility. Counsel maintains that the applicant has established extreme hardship to his wife.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant was granted asylum in immigration proceedings on September 30, 1991, but he never sought to adjust his status based on his condition as an asylee. In September 1998, the applicant went to the Baltimore district office of Immigration and Naturalization Services, now Citizenship and Immigration Services (CIS) with the intent to procure advance parole in order to travel back to Iran for a family visit. According to the applicant's August 17, 2001 affidavit, he was unaware that his attorney presented a fraudulent document in order to obtain a stamp in the applicant's passport showing temporary evidence of permanent residence. The applicant stated that his attorney told him that asylees were entitled to such a stamp. In his affidavit, the applicant stated that an immigration inspector subsequently informed him

that the stamp was not appropriate in his case, but that upon a later visit to the Baltimore office, he was told that the stamp was valid and that he could travel with it.

The applicant later applied for and was granted advance parole, with which he traveled several times to Iran to visit his family. According to his affidavit, he complied with instructions from immigration personnel each time he departed and returned to the United States; there is no evidence that he attempted to evade normal immigration procedures at any time. According to evidence on the record, the attorney who represented him when the fraudulent passport stamp was procured, Mr. [redacted] was indeed ordered suspended indefinitely from the practice of law for the commission of a criminal act that reflected adversely on his honesty or fitness as a lawyer and for engaging in dishonest conduct that was prejudicial to the administration of justice and to the interests of his clients.

Counsel's assertion that the applicant was unaware of the presentation of the fraudulent document in his case is persuasive and is supported by the evidence on the record. The record does not establish that the applicant willfully misrepresented material facts regarding the procurement of the stamp in his passport; therefore, he is not subject on this basis to the § 212(a)(6)(C) bar to admissibility.

The acting director's decision, however, does not state precisely that the above-described situation is the basis, or the only basis, on which the applicant was found to be subject to the § 212(a)(6)(C) bar to inadmissibility. The denial decision, for example, refers to inconsistencies in the record regarding the number of times the applicant had been married prior to his current marriage to a U.S. citizen. In the denial of the applicant's Form I-485 Application for Adjustment of Status, the district director pointed out that on his 1983 and 1984 applications for a visitor's visa, while the applicant was still living in Iran, the applicant indicated that he was married. Later, however, on the applicant's first I-485 (he was married to a different U.S. citizen prior to his current marriage), which he filed in 1985, the applicant indicated that he had only been married once, to his then-current U.S. citizen spouse. The acting district director wrote in his denial that this discrepancy led to a finding that the applicant was not legally available to marry the wife who now claims she would suffer extreme hardship upon the applicant's removal.

The record, however, contains explanations and documents relating to the Shi'a Islamic practice of temporary marriage, or "sigheh," as it is known in Iran. There is ample literature discussing this subject, a practice which dates from the time of Mohammad, the founder of the religion of Islam. According to Iranian religious law, temporary marriages carry a finite expiration date, which is noted on the marriage contract. After the marriage expires, it ceases to exist as if it had never been; no divorce is necessary. [redacted] *Love Finds a Way in Iran: Temporary Marriage*, New York Times, October 4, 2000. At the time the applicant was involved in the "sigheh," by tradition, he considered himself married. However, after the contract expired, and since divorce was not necessary, there was no need to list it as a marriage for the purposes of U.S. law. The AAO finds that the evidence on the record resolves the acting district director's perceived discrepancy relating to the number of legal marriages the applicant had.

The district director also mentioned in his denial of the applicant's I-485 adjustment of status application the applicant's having been fined and put on probation for a "criminal act involving fraud." The district director was referring to the applicant's having been placed on probation before judgement for the unauthorized use of a vehicle registration plate, pursuant to Article 14, § 107 of the Annotated Code of Maryland Transportation.

As the acting district director did not refer to this misdemeanor in his denial of the waiver application, it does not appear to have been considered a basis for inadmissibility.

Upon review of the record, the AAO concludes that the evidence does not indicate that the applicant is inadmissible pursuant to § 212(a)(6)(C) of the Act. The application for a waiver of inadmissibility is therefore moot. Thus, the AAO need not consider the issue of extreme hardship. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application declared moot.